



Commonwealth of Massachusetts
Executive Office For Administration And Finance

Operational Services Division

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**Report to the Massachusetts House and Senate
Committees on Ways and Means in Response to FY2005
Outside Budget Section 277**

**Submitted by:
The Operational Services Division
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I. Executive Summary:

Fiscal year 2005 Outside Budget Section 277 (Section 277) requires the Operational Services Division to implement specific procurement reforms including a review of the Commonwealth's procurement process, an analysis of saving opportunities in specific commodity and service categories and a status report on the implementation of procurement reforms to the House and Senate Committees on Ways and Means by not later than January 1, 2005.

The Operational Services Division (OSD) welcomes the opportunity to provide an update on the steps taken and those planned to save the Commonwealth money by improving the way that we procure goods and services. OSD shares the Legislature's belief that there are opportunities to generate hard dollar savings by fully leveraging the Commonwealth's significant purchasing power by conducting multiple round negotiations/reverse auctions with bidders, streamlining procurements and contracts, increasing competition and taking advantage of spend management technology. Many of these savings opportunities were confirmed in a report submitted to OSD and the Executive Office for Administration and Finance in October 2004 by a Boston-based independent consultant firm, Silver Oak Solutions (SOS), which concluded that **the Commonwealth could save between \$20.2 million and \$32.6 million in specific commodity/service spend areas if OSD is able to hire additional staff, implement spend management controls and successfully implement the procurement reforms suggested in this report.**

OSD has already started implementing many of the reforms recommended in the SOS report that required no additional funding for staff or technology improvements. During the last 6 months alone, we have achieved the following significant savings from utilizing our procurement tools more efficiently:

1. Projected equipment savings of at least \$17 million per year after conducting aggressive multiple round negotiations with bidders in our copier, printer and facsimile procurement;
2. Rebates of almost \$400,000 to Commonwealth cities and towns that utilized our school supplies statewide contract as a result of enforcing our "Most Favored Customer" contract clause which, as a specification in all statewide contracts, requires contractors to give us better prices that they may subsequently offer to other similar customers.
3. Projected annual savings based on Fiscal Year 2003 usage of greater than \$400,000 from Verizon after they offered to drop their pricing in response to our enforcement of the Most Favored Customer Clause with AT&T for long distance telephone service (negotiations are currently underway with AT&T).
4. Recovery of \$257,016 as a result of an audit of one of our prime grocers.

In Outside Section #277, the Legislature also requested a review of specific commodity and service areas to see if immediate savings could be generated, including but not limited to, information technology, office supplies, lighting, food and food service equipment, medical supplies, janitorial supplies, temporary staffing and building supplies. The SOS report analyzed OSD's statewide contracts in these specific commodity and service areas and concluded that, while many of these contracts are good, opportunities for improvement exist. Requiring multiple round negotiations to obtain the best price, increasing the use of reverse auction technology to drive prices down, awarding contracts to the fewest number of bidders, executing contracts for no more than three years to provide more frequent opportunities for companies to compete for statewide contracts, aggregating purchasing activity whenever possible and developing spend management reporting to identify when the Commonwealth is being billed twice or charged a higher price are areas that will be implemented over the next eighteen months.

These changes in procurement policy will result in a re-defined mission for the Operational Services Division and a change for departments in the way commodities and services are purchased. OSD will focus on identifying opportunities to create and sustain savings through improved contract and spend management. To accomplish this will require better spend management data on who is purchasing what commodities and services, when and at what price. It will require re-training existing staff and hiring new staff that are subject matter experts, tough negotiators and spend/contract managers. It will require additional staff resources to address customer service needs of purchasers, contractors and prospective bidders so procurement staff are able to concentrate their expertise on creating best value contracts that generate cost savings.

For departments, this change will mean adopting a purchasing discipline that, in most cases, has not been required or been a part of the purchasing culture. Statewide contracts will still provide most of the commodities and services needed by departments to conduct their business, however there will be fewer product lines available and fewer contractors from whom to order. Departments may be asked to hold off purchasing a piece of equipment if, by doing so, OSD can aggregate purchases and conduct a reverse auction to achieve greater savings. OSD procurement staff will have the ability to identify when a department is attempting to conduct a procurement for a commodity and service already available from a statewide contract and will take the appropriate steps to prevent “off-contract” or maverick spending. In addition, OSD will be expanding the focus of our Quality Assurance Team to include a review of all non-competitive procurements to ensure that departments are utilizing competitive procurement exceptions consistent with the regulations and policy requirements and that statewide contracts are being used at all times.

Section 277 asked for a recommendation from OSD as to whether the trial courts, University of Massachusetts system, community colleges and state colleges should be required to utilize statewide contracts as do all other Executive agencies. OSD has discussed this issue with both representatives of the trial courts and higher education and has the following recommendations for consideration by the Legislature on this question.

The Higher Education system is a part of the Executive Branch and appears to purchase many of the same commodities and services available off statewide contracts. However, OSD has not had sufficient time or resources to conduct a comprehensive review of the manner in which Higher Education conducts their procurements, identify the types of high volume commodities and service purchased by Higher Education and conduct a comparison of their contract prices to those available off OSD’s statewide contracts. OSD believes that there are opportunities to save taxpayer dollars and, as such, proposes to work closely with the University Procurement Councils, the Massachusetts Higher Education Consortium and state and community colleges to gather additional information and explore all possible options. OSD has been invited to attend the January meeting of the University Procurement Council as the first step in this process. If the Legislature determines that Higher Education should be required to use statewide contracts, then statutory language changes would be needed to effectuate this change.

In regards to the Trial Courts, OSD believes there is a constitutional separation of powers issue that requires the Judiciary to be treated differently from Executive Branch departments. While the Legislature did not specifically name the Judiciary as being exempt from OSD’s statutes ([MGL c. 7, § 22](#), [MGL c. 30, § 51](#) and [MGL c. 30, § 52](#)), it may have been the Legislature’s intent to do so based on the separation of powers provisions of the Constitution. OSD is seeking clarification from the Legislature as to its concurrence with the separation of powers argument and whether the Judicial Branch should be specifically exempted, in statute, from OSD’s authority. Irrespective of any action taken by the Legislature, OSD strongly believes that voluntarily combining the purchasing volume of all branches of the Commonwealth would help to achieve greater savings for all participating entities.

Finally, the Romney Administration shares the Legislature’s goal of maximizing savings by leveraging all Commonwealth spending volume and aggregating purchases when OSD procures statewide contracts. To support this, the FY 2006 House 1 budget will include several initiatives that would permit OSD to hire a small number of procurement, technical and contract support staff by restoring funding to OSD which, as the Commonwealth’s central procurement office, has had staffing and funding reduced by over 60% over the past five years. Some of this modest increase in funding for hiring additional staff will be generated through increased auditing activities that will identify non-reimbursable costs or overcharges that would be fully retained by OSD.

In conclusion, OSD is appreciative of the Legislature’s interest in better understanding the work of the state’s centralized procurement office and in supporting OSD’s efforts to achieving greater savings for the taxpayers of the Commonwealth.

II. Introduction:

The Senate and House of Representatives (Legislature) of the Commonwealth of Massachusetts passed Outside Budget Section 277 in their Fiscal Year 2005 Budget, which was subsequently signed by Governor Mitt Romney. The purpose of this Outside Section was twofold: 1) to instruct the Operations Services Division (OSD) within the Executive Office of Administration and Finance to implement some specific procurement reforms; and 2) to submit a progress report to the House and Senate Committees on Ways and Means, by January 1, 2005, on the implementation of these reforms.

III. Actual Language of Fiscal Year 2005 Outside Budget Section 277:

SECTION 277. Notwithstanding any general or special law to the contrary, the division of operational services shall implement in fiscal year 2005 procurement reforms including, but not limited to the following: (a) a review of the procurement of goods and services to ensure all goods and services procured by the commonwealth or its political subdivisions shall be in the most efficient and cost effective manner possible; (b) deploy new strategies to increase vendor competition including, but not limited to, reverse auctions and multiple-round requests for proposals; (c) review key purchasing categories to provide immediate savings in, including but not limited to, information technology, office supplies, lighting, food and food service equipment, medical supplies, janitorial supplies, temporary staffing and building supplies; (d) review existing equipment maintenance programs and identify opportunities for savings in state warranty agreements on, including but not limited to, information technology, printers, facsimile machines, copiers, telecommunication equipment, mail machines, and other hardware; (e) work with industry consultants and specialists to analyze contracts, benchmark value against other states and assist in vendor negotiations; provided, that the consultants and specialists shall only be paid from any actual savings discovered; (f) the division shall specifically look into the initial warranties offered with the purchase or lease of the above products, including exploring the option of combining contracts to best provide the commonwealth with equipment and warranties at reduced costs while still providing adequate warranty coverage; and (g) explore the possibility of bulk purchasing for standard equipment or services to increase purchasing power and achieve maximum savings. The division of operational services shall submit a report on the implementation of procurement reforms that shall include, but not be limited to, the following: (a) a summary of actions taken to-date on the above referenced reforms; (b) a review of instances where agencies expended funds on any product when the expenditures exceeded that of the published costs under any statewide procurement contract for fiscal years 2002 to 2004, inclusive, the reasons why these purchases were not made through the statewide contract, and any recommendations on how these purchases can be limited in the future; (c) a report on reverse auctions and multiple round requests for proposal, the frequency that these procurement bidding processes occur in relation to other bidding processes and the reasons why each bid process is chosen over another bid process; (d) where efficiencies can be made in providing statewide procurement contracts for any, information technology, printers, facsimile machines, copiers, telecommunication equipment, mail machines, and other hardware electronic equipment leases, purchases and warranties; and (e) the division shall include in said report recommendations to require the trial courts, University of Massachusetts system, community colleges and state colleges to utilize the statewide contracts in the same manner of all other agencies. The division shall submit the report to the house and senate committees on ways and means not later than January 1, 2005.

IV. Procurement Background:

There are several statutes that apply to the procurement of goods and services in the Commonwealth, including:

1. [MGL c. 7, § 22](#), [MGL c. 30, § 51](#) and [MGL c. 30, § 52](#) are OSD's enabling statutes which apply to Commonwealth entities but specifically exempt the Legislative Branch and Military Division from their applicability.
2. [MGL c. 30B](#), applies to cities and towns and still-existing county entities of the Commonwealth. OSD has no oversight authority over this statute or these entities. Although not required to do so, cities and towns frequently purchase off statewide contracts because it saves them the time of conducting their own procurement under Chapter 30B and the prices available off statewide contracts are often more competitive due to the Commonwealth's purchasing power.

3. The University of Massachusetts, State Colleges and Community Colleges and the Higher Education Consortium have statutory authority to conduct certain procurements pursuant to [MGL c. 75, § 13](#), [MGL c. 73, § 15](#), [MGL c. 15A, § 24](#) and [MGL c. 15A, 24A](#). However, where these statutes are silent, these entities fall under OSD's statutes and authority.

In addition, OSD has promulgated regulations, [801 CMR 21.00](#), which prescribe specific procurement requirements for entities that fall under OSD's authority. However, OSD has specifically exempted the applicability of these regulations to the following entities: Legislative Branch and Military Division (as prescribed by statute); Judicial Branch, Constitutional Offices and Elected Offices; Public Institutions of Higher Education (due to the aforementioned statutes that apply to some of their procurements); and Independent Public Authorities. Despite these regulatory exemptions, several of these entities, including the State Treasurer, have opted to follow OSD's regulations and many others routinely utilize OSD's Statewide Contracts.

V. Response to Outside Section 277:

In response to questions raised by both the Romney Administration and the Legislature in Section # 277, OSD recently completed an eight month analysis of the Commonwealth's procurement system. Working with an independent Boston based consultant firm, Silver Oak Solutions ("SOS"), the engagement analyzed and made recommendations in three areas:

1. Procurement Systems – Can improvements be made to the current procurement system to better serve the Commonwealth's needs?
2. Technology – What is the current capability and future technology needs in the areas of spend management, eprocurement, supplier management, contract management and on-line purchasing?
3. Improved Pricing – How do OSD's current contract prices compare with other public entities and what steps can be taken to leverage the Commonwealth's buying power to reduce costs?

Many of our responses to the issues raised in Outside Section 277 will reference the findings and recommendations of the independent review completed by SOS. Below is the response by the Operational Services Division to each *subsection* in Outside Section 277.

A. Procurement Reforms to be implemented in Fiscal Year 2005:

(a) a review of the procurement of goods and services to ensure all goods and services procured by the commonwealth or its political subdivisions shall be in the most efficient and cost effective manner possible.

OSD Response:

After conducting a thorough assessment of OSD's procurement process, Silver Oak Solutions concluded that:

"Overall, the State has developed **well thought-out and progressive processes** to conduct its procurement activities. Despite budget reductions and resource constraints, OSD has been quite active during the course of the past decade seeking to improve the organization to better meet the needs of its customers. Within that context, our review has identified a number of areas in which implementation of **tested and proven processes that can significantly increase the value that OSD delivers to the State.**" (Silver Oak Solutions "Procurement Systems and Efficiencies Review" 10/1/04)

Where SOS identified tactical steps that could be implemented with no additional resources, OSD has started to implement those recommendations into our current procurement/contracting process. These changes include:

- 1) **Require multiple round negotiations** with bidders in order to obtain the best price – this will require OSD procurement staff to incorporate this new requirement into all statewide procurements and to plan for Reverse Auctions, multiple Best and Final Offer (BAFO) rounds and/or negotiations on price and other factors.
- 2) **Dramatically re-design and streamline the Procurement process**, including:

- **Awarding Statewide Contracts to the fewest number of bidders** while still ensuring coverage or service capacity throughout the Commonwealth in order to maximize competition and reduce costs to the Commonwealth. The starting point will be that, unless there are extenuating circumstances (such as regional coverage issues, the need for specialized commodities and/or services to be on contract, etc.) that require multiple awards, there shall be no more than one contractor per procurement. In return for a guarantee of volume, the Commonwealth will expect and negotiate deeper discounts.
- **Limiting the number of choices** of commodities and/or services available on statewide contracts while still ensuring that agency needs are being met.
- **Reducing the time required to complete both simple and complex procurements.** OSD is in the process of developing timeframe benchmarks by which OSD procurements must be completed and against which staff performance will be evaluated.
- **Issuing procurements for most statewide contracts for no more than a three-year duration** (including options to renew). This will provide more frequent opportunities for companies to compete for the Commonwealth's business.
- **More effectively manage the Commonwealth spend by:**
 - **Consolidating procurements and contracts** whenever feasible based on similar products/services or suppliers/manufacturers.
 - **Require aggregate purchase/improved "Big Buy" for specific commodities**, starting with computers. Work closely with the Information Technology Division on reducing Personal Computer configuration options and coordinating periodic aggregate purchases.

3) **Expand the use of the Statewide Contract for Reverse Auctions** by including language in all statewide procurements, where the use of reverse auctions is appropriate, stating that, if OSD utilizes reverse auction technology as part of the procurement process and there is a cost for this, the winning bidder(s) will be responsible for paying that cost, not to exceed \$3,000 per event.

4) **Require that estimated volume purchase information be included in all OSD procurements.** Requiring the inclusion of this information in all OSD procurements will provide interested bidders with an incentive to provide even deeper discounts in their bids.

5) **Display price and unit information on Statewide Contracts clearly and consistently on Comm-PASS**, the Commonwealth's on-line procurement system, in a way that is easily understood and retrievable to all purchasers.

6) **Require that options to renew statewide contracts not be exercised unless** there is clear and documented financial benefit to the Commonwealth to extending either in the form of significant price reductions or cost avoidance of a certain and significant price increase.

Silver Oak Solutions also recommended tactical next steps that require additional resources or legislative action that are addressed in the final recommendations section of this report.

It has been estimated by Silver Oak Solutions that the Commonwealth could save between \$20.2 million and \$32.6 million in specific commodity/service spend areas if OSD is able to hire additional staff, implement spend management controls and successfully implement the procurement reforms suggested in this report.

(b) deploy new strategies to increase vendor competition including, but not limited to, reverse auctions and multiple-round requests for proposals.

OSD Response:

OSD currently has regulations (801 CMR 21.06 (11) and 21.07 respectively) permitting the options to conduct Best and Final Offers (BAFO) and competitive negotiations that result in lower costs or better value to the Commonwealth. OSD has implemented a new policy that requires multiple round competitive negotiations in all statewide procurements issued by OSD.

OSD was one of the first states in the nation to conduct a reverse auction over 3 years ago and, since that time, has conducted four auctions achieving over \$1 million in additional savings to the Commonwealth. SOS, as part of their review of our processes, determined that the Commonwealth's reverse auction statewide contract, which costs the procuring entity \$3,000 per reverse auction event, represents a good contract at a good price and agreed with the plan to expand its use. In order to expand this use, OSD will require in all statewide contracts, where the use of reverse auctions is appropriate, language stating that, if OSD utilizes reverse auction technology as part of the procurement process and there is a cost for this, the winning bidder(s) will be responsible for paying that cost, not to exceed \$3,000 per event.

Other strategies to increase vendor competition include the Commonwealth's Procurement Access and Solicitation System (Comm-PASS) and new procurement policies that OSD is implementing. In July, 2004, OSD launched the enhanced Comm-PASS system, the Commonwealth's electronic procurement system, which permits, for the first time, cities/towns, independent authorities, the judiciary and higher education the ability to post their solicitations on a web based system at no cost. This centralized marketplace for public procurements will attract greater numbers of interested bidders with the goal of increasing competition and driving down costs.

Finally, OSD will be implementing a new policy to concentrate Commonwealth spend with fewer contractors by limiting the number of contracts executed with bidders. We believe this will result in not only better value and lower prices to the Commonwealth but also increased competition as the value of receiving a statewide contract will increase. This will be done by informing bidders in the solicitation documents (RFRs) and then reminding them at the time of the subsequent negotiation rounds that, unlike past solicitations where numerous contracts may have been awarded, there will be only one or a limited number of contracts awarded in future solicitations.

We are confident that the deployment of these tools in a more consistent and aggressive manner will result in increased competition, better value and greater savings for public purchasers using Statewide Contracts.

(c) review key purchasing categories to provide immediate savings in, including but not limited to, information technology, office supplies, lighting, food and food service equipment, medical supplies, janitorial supplies, temporary staffing and building supplies.

OSD Response:

The SOS report analyzed OSD's statewide contracts in these named commodity and service areas and concluded that, while many of the existing contracts are good, there are opportunities for improvement. The following section identifies the report recommendations, OSD's internal plans (independent of the SOS report) and/or the actions taken by OSD to-date regarding the purchasing categories identified by the Legislature in Outside Section 277:

1) **Information Technology – Hardware:** During FY 2004, the Commonwealth reported spending \$33.7 million through our accounting system on desktop computers, laptops, servers and accessories. SOS estimated that between 7% and 10%, or \$2.3 million to \$3.4 million, could be saved by consolidating contracts with fewer, qualified suppliers, working with the Information Technology Division to reduce the set of configurations available for purchase and by aggregating purchasing through a "Big Buy" at pre-determined times throughout the year. OSD will be pursuing these strategies in FY 2006.

Information Technology – Consultants: During FY 2004, the Commonwealth reported spending \$74.7 million on Technical Specialists and Contract Personnel. SOS estimated that between 15% and 25%, or \$11.2 million to \$18.7 million, could be saved by consolidating the supplier base to a smaller number of highly qualified suppliers, reducing the number of standard job titles, and introducing rate cards. Since this contract is being bid now, OSD will implement these recommendations for the new contract starting July 1, 2005. As a result, the number of contractors on this contract will be dramatically reduced from nearly 500 contractors on the current ITS07 contract to approximately 100 contractors on the new ITS23. Agencies will also be required to obtain at least three quotes for all work to be done under the new contract.

2) **Office Supplies** – During FY 2004, the Commonwealth reported spending \$7.8 million on Office Supplies. SOS estimated that between 20% and 30%, or \$1.7 million to \$2.3 million, could be saved on office supplies.

OSD plans on consolidating the Statewide Contracts for office supplies, paper and envelopes into one RFR and awarding the minimum number of contractors to meet our needs. OSD is also limiting the number of line item choices available for purchase in order to better leverage the Commonwealth's overall spend, e.g. offer fewer stapler options. In addition, OSD is considering ways to reduce pricing by encouraging bidders to provide pricing from their lowest cost wholesalers and/or manufacturers, thereby providing an incentive for bidders to more aggressively negotiate with their wholesalers/manufacturers.

3) Maintenance, Repair & Operations (MRO) Contract includes the following 5 categories (which include 3 of the categories requested in Outside Section 277, lighting, janitorial supplies and building supplies): Electrical Supplies, Industrial Supplies, Janitorial Supplies, PVF Supplies and HVAC Supplies. During FY2004, the Commonwealth reported spending \$12.3 million through our accounting system on these 5 commodity categories. SOS estimated that between 10% and 15%, or \$1.2 million to \$1.8 million, could be saved by combining these individual contracts into one MRO contract. OSD will be discussing this approach with Connecticut and Rhode Island, two states that have recently implemented this type of contract, to review actual savings and determine the feasibility of combining these commodities into one contract.

4) Food and Food Service Equipment – Food: During FY 2004, the Commonwealth reported spending \$18.9 million through our accounting system on food and non food items (i.e. paper products and janitorial supplies, etc.). SOS estimated that between 8% and 10%, or \$1.5 million to \$1.9 million, could be saved by structuring a comprehensive RFR (developing a list of high-spend, high-volume items; using private labels), consolidating statewide volume for food distribution, negotiating pricing based on external benchmarks and negotiating additional discounts into the contract. OSD will be developing a list of high spend and high volume items to negotiate more competitive pricing. Finally, independent audits, completed at no cost to the Commonwealth and a feature of this contract since its inception, resulted in a credit back to the Commonwealth of \$257,016.

Food Service Equipment – The contract for Food Service Equipment (GROO7) expires on March 14, 2006. OSD will issue this RFR within the next fiscal year with a goal of reducing the number of contractors and standardizing the product list to achieve more competitive pricing.

5) Medical Supplies – In July 2003, a Group Purchasing Organization (GPO) was selected for purchasing medical and surgical commodities as leverage for improving pricing. Previously, the purchasing was conducted through distributors that were awarded contracts but negotiated agreements directly with manufacturers. The GPO was selected to introduce transparency into pricing and to ensure that the Commonwealth was being offered the lowest possible acquisition price (inclusive of all discounts and volume purchases) based on our ability to aggregate purchasing. In August 2004, a study compared the procurement costs of medical and surgical commodities during the past two years of this contract. The analysis indicated the average savings was 14% over the previous statewide contract, which translates into an estimated \$100,000 annual savings for Commonwealth departments.

6) Temporary Staffing (Temporary Help Services) - During FY 2004, the Commonwealth reported spending \$10.5 million on Temporary Help Services with over 110 user entities. During FY 2005, OSD will procure temporary help services that will result in 'per hour' savings when compared to our benchmark, which is the federal Department of Labor data for the Boston / New England area while ensuring quality of services through background checks conducted prior to placement.

(d) review existing equipment maintenance programs and identify opportunities for savings in state warranty agreements on, including but not limited to, information technology, printers, facsimile machines, copiers, telecommunication equipment, mail machines, and other hardware.

OSD Response:

OSD has had preliminary discussions with equipment brokers in order to determine the marketplace for warranty services and to determine what equipment categories, in their opinion, can be combined.

The statewide copier, printer and facsimile procurement team determined during the research and development phase of the new request for response (RFR) that, due to the fact that most copier equipment is leased by eligible entities, it was not in the Commonwealth's best interest to remove the maintenance component from the procurement of the actual equipment. In the team's opinion, had they removed the maintenance component from the RFR, the result would have been higher lease costs, warranty disputes and, due to the fair market value of the lease agreement with the contractors, a higher risk of depreciation of the equipment at the end of the lease.

The recently awarded contracts under this copier, printer and facsimile RFR have already proven to be extremely cost beneficial when comparing the maintenance prices for black and white digital copiers of 3 specific contractors under their old versus their new contracts. These maintenance savings range from 21% to 47% lower than their previous contract prices and amount to over \$2.2 million per year in total for these 3 companies alone. As an example, one copier bidder on this contract, Ikon Office Solutions, offered, as an added value in their bid, to transfer their new, lower maintenance prices onto all currently existing maintenance agreements under the old statewide contract. As a result, Ikon's new contract alone will save all eligible entities (including cities and towns) that are currently using their old contract at least \$500,000 for the remaining lease term for equipment models from the former statewide contract.

For personal computers and other IT computer equipment, there will not be significant opportunities for warranty savings based on a 2003 directive from the Information Technology Division, which requires that all executive agencies lease equipment rather than purchase and refresh all personal computer equipment every three years. In the case of leased equipment, during the three-year lease term, equipment comes with on-site warranty included in the lease price. At the end of the lease term, the equipment is then returned to the lessor. Under this model, there would be no off-warranty maintenance costs associated with leased equipment; therefore, there will be no opportunities to save.

(e) work with industry consultants and specialists to analyze contracts, benchmark value against other states and assist in vendor negotiations; provided, that the consultants and specialists shall only be paid from any actual savings discovered.

OSD Response:

As discussed in section (a) above, OSD completed an engagement with a nationally recognized consultant, Silver Oaks Solutions, to analyze statewide contracts and benchmark the value of those contracts against other states. While Silver Oak Solutions did not assist directly in vendor negotiations, their report provided specific recommendations to improve OSD's contract negotiation procedures. With additional staff resources and technology being requested in our FY 2006 budget, OSD intends to fully implement these recommendations to generate savings of between \$20.2 and \$32.6 million.

Rather than pay a strategic sourcing/spend management consultant a percentage of savings realized, which, as reported to OSD by other states, can cost in excess of \$6 million, OSD intends to aggressively pursue these savings in FY 2005 and 2006 so that 100% of the dollars will be available as direct savings to Commonwealth purchasers using statewide contracts. Silver Oak Solutions served as a consultant to the State of Connecticut to achieve significant savings in photocopier costs. However, a recent comparison of Connecticut's photocopier prices to those of OSD's recently-completed photocopier contract confirmed that the Commonwealth's prices for one copier contractor alone are between 33% and 52% less than Connecticut's prices based on Massachusetts' average monthly volume. When those percentage savings are multiplied by the number of units historically purchased from this same contractor, the total savings add up to approximately \$2.65 million annually.

(f) the division shall specifically look into the initial warranties offered with the purchase or lease of the above products, including exploring the option of combining contracts to best provide the commonwealth with equipment and warranties at reduced costs while still providing adequate warranty coverage.

OSD Response:

OSD has looked into the initial warranties offered with the purchase or lease of specific office and information technology equipment and has, in fact, combined solicitations/contracts for copiers, printers, facsimiles and

related supplies into a single competitive bid that was recently awarded. OSD has also requested longer warranties from bidders under this solicitation and has evaluated the bids and awarded contracts based on the “total cost of ownership”, which specifically includes warranty offerings. This new statewide contract includes a minimum initial warranty of 6 months for copiers and 12 months for printer and facsimile equipment with some bidders offering 12 months or more for copiers and 18 months for printers and facsimiles. OSD intends to utilize this same approach of pursuing extended initial warranties in future procurements for equipment.

(g) explore the possibility of bulk purchasing for standard equipment or services to increase purchasing power and achieve maximum savings.

OSD Response:

While there may be opportunities to centrally purchase certain goods and/or services across the Commonwealth, the Commonwealth is a highly decentralized organization where funds are appropriated to each department in order for purchasing to take place at the department level. However, OSD has experience with conducting aggregated purchases and has done so for the annual “Big Buy” computer purchase, for photocopier paper and photocopier “Big Buys”, which have resulted in additional savings over the original contracted prices.

The annual “Big Buy” computer purchase has resulted in tens of millions of dollars of savings, since it was first utilized approximately 10 years ago. In fact, OSD has achieved approximately \$9.7 million in savings over the past 12 months from one Big Buy contractor (Dell Computer) alone. This amount does not even include the \$5.1 million discount off list prices that OSD had already secured from this statewide contractor, driving up our total savings from this contractor to \$14.8 million over this 12 month period.

However, the process of aggregating purchases for such a highly decentralized organization such as the Commonwealth, with executive and non-executive departments, judiciary, legislature, constitutional offices, and higher education to name just a few, requires technology tools and staff resources that are currently not available at OSD. OSD does have the ability to track department procurement activity using our enhanced Comm-PASS system which includes functionality that allows OSD staff to monitor the procurement activity of agencies, intervene when opportunities for bulk purchase are identified and aggregate those purchases. This is a manual, staff intensive process and even more of a challenge due to OSD’s 60% staff reductions over the past 5 years.

In addition, SOS has suggested in their report that OSD could achieve significant savings by not only aggregating purchases but by also standardizing and minimizing the available product specifications options. OSD will be implementing this recommendation for all OSD procurements, especially with the Information Technology Division for all IT procurements.

Finally, OSD will be investigating the following options to help the Commonwealth achieve greater savings:

1. Require the submission of annual purchasing plans for specific goods and services from state agencies to better anticipate and manage department purchases and aggregate their total demand;
2. Reduce the delegation levels that departments may purchase up to, from \$500,000 to \$100,000 for services, which is the same level for the purchase of commodities;
3. Work with the Office of the Comptroller and the Executive Office of Administration and Finance to investigate the feasibility of centralizing billing and payments for specific commodities purchased off statewide contracts, such as office supplies, computers, electricity and road salt;
4. Request FY 2006 capital bond funding to procure an on-line, web-based Purchasing system that will reduce transaction time by 73%, provide greater transparency into department purchasing patterns and place controls on what departments can and/or can not purchase;
5. Establish a contingent fee based contract for comprehensive recovery auditing services and transaction assurance similar to a contract executed by the State of New York to identify recoupment due to double or incorrect billing from and payments to statewide contractors; and
6. Fully utilize the online procurement tools available in our recently enhanced Comm-PASS system. These tools, which include automated workflow capabilities, could allow OSD, through a combination of policy and good business practices, to conduct aggregate purchases on a more frequent basis for a wider range of contracts.

B. Submit a report to the house and senate committees on ways and means by January 1, 2005 on the implementation of procurement reforms, including those below:

(a) a summary of actions taken to-date on the above referenced reforms.

OSD Response:

As a result of the Silver Oaks review, OSD has started to change the way statewide contracts are procured. The goal of this re-engineering process is to **provide direct savings and manage spend** when departments use statewide contracts to purchase the commodities and services necessary to support their core mission. OSD will track the progress of this process by developing metrics to determine if OSD has:

- **Increased efficiency** by streamlining the procurement process to reduce the time involved in procuring and establishing statewide contracts.
- **Increased public dollars spent using statewide contracts** through customer research, spend analysis, enforcement of purchasing requirements and increased outreach to cities/towns, higher education, independent authorities, constitutional offices, the judiciary, military and the legislature.
- **Improved pricing** by: increasing bidder competition by requiring multiple round negotiation procurements; requiring aggregate purchases identified through the annual submission of procurement plans to OSD for high volume, high cost items; reducing delegation levels; and monitoring prices through improved spend management technology and audit recoupment contingent fee contracts.
- **Reduced choice** by limiting product lines, reducing service options, establishing stricter purchasing procedures and limiting configurations in computer hardware and other purchases.
- **Limited the number of vendors** on each contract in order to concentrate the spend while still ensuring statewide coverage. The default position will be to award to only one vendor unless lack of capacity, statewide coverage or other factors can be justified to the State Purchasing Agent.

These changes in procurement policy will result in a re-defined mission for the Operational Services Division and a change for departments in the way commodities and services are purchased. OSD will focus on identifying opportunities to create and sustain savings through improved contract and spend management. To accomplish this will require better spend management data on who is purchasing what commodities and services, when and at what price. It will require re-training existing staff and hiring new staff that are subject matter experts, tough negotiators and spend/contract managers. It will require additional staff resources to address customer service needs of purchasers, contractors and prospective bidders so procurement staff are able to concentrate their expertise on creating best value contracts that generate cost savings.

For departments, this change will mean adopting a purchasing discipline that, in most cases, has not been required or been a part of the purchasing culture. Statewide contracts will still provide most of the commodities and services needed by departments to conduct their business, however there will be fewer product lines available and fewer contractors from whom to order. Departments may be asked to hold off purchasing a piece of equipment if, by doing so, OSD can aggregate purchases and conduct a reverse auction to achieve greater savings. OSD procurement staff will have the ability to identify when a department is attempting to conduct a procurement for a commodity and service already available from a statewide contract and will take the appropriate steps to prevent "off-contract" or maverick spending. In addition, OSD will be expanding the focus of our Quality Assurance Team to include a review of all non-competitive procurements to ensure that departments are utilizing competitive procurement exceptions consistent with the regulations and policy requirements and that statewide contracts are being used at all times.

A summary of specific actions taken to date can be found in the earlier sections of this report.

(b) a review of instances where agencies expended funds on any product when the expenditures exceeded that of the published costs under any statewide procurement contract for fiscal years 2002 to 2004, inclusive, the reasons

why these purchases were not made through the statewide contract, and any recommendations on how these purchases can be limited in the future.

OSD Response

OSD does not currently have the availability of either staff or technology to identify situations where there have been billing or price errors. This problem was highlighted to OSD in a very real sense during the Silver Oak Solutions engagement where it was documented that Commonwealth departments paid between \$45.05 and \$93.06 for the same Forane 30lb. Refrigerant. Once OSD was made aware of this pricing discrepancy, any errors in pricing, which totaled \$497.78, were 100% resolved through rebates to the overcharged entities and the contractor has taken steps to ensure that pricing errors do not reoccur. While Departments are required to buy off statewide contracts and are responsible for checking to ensure that they are billed the correct statewide contract price, this clearly does not always happen.

A report issued in March 2004 by the Senate Post Audit and Oversight Committee noted the purchase price of \$.60 for a standard light bulb even though the price for this item on OSD's statewide electrical supply contracts was \$.17, \$.18 or \$.19.¹ Based on that report, it is clear that the Commonwealth is not consistently taking advantage of the lower prices available off OSD's statewide contracts. And, as highlighted earlier in this report, there are parts of state government that are not required to purchase off statewide contracts which may account for continued stories of the Commonwealth spending more for a commodity or service than necessary.

Although there is more that can and should be done, OSD has taken the following steps to reduce the possibility of overpayments and increase control over prices on statewide contracts:

1. Effective in 2002, OSD included "Most Favored Customer" language as a required term in all statewide contracts.² This language states that a contractor may not charge any other comparable customer of similar size and terms and conditions a price lower than that which is charged to the Commonwealth. In FY 2005, this language was the basis for OSD obtaining rebates of almost \$400,000 (or 100% of the amount due) back to Commonwealth cities and towns for price discrepancies on a school supplies contract. In addition, while recently negotiating with AT&T in an attempt to enforce the Most Favored Customer Clause for long distance telephone service, Verizon offered to drop their pricing, resulting in annual savings based on Fiscal Year 2003 usage of greater than \$400,000 from Verizon alone (negotiations are currently underway with AT&T). This is a powerful contract clause that allows the Commonwealth to not only secure better prices but also to negotiate with all contractors. OSD's House 1 Budget proposal for FY 2006 would provide us with funding levels that, if approved by the legislature, would allow us to hire additional staff to help us better pursue violators of this clause and protect taxpayer dollars.
2. In addition, OSD included an audit component in its food statewide contract in 2002 to review invoicing and pricing discrepancies and track down missed rebates for current market basket items from Prime Grocer contractors. The findings in an audit of one of the Prime Grocers resulted in credits to the Commonwealth of \$257,016. The ongoing audits have continued to find additional smaller price discrepancies, which have resulted in various credits to the Commonwealth for both Prime Grocer contractors.
3. OSD has requested FY 2006 Information Technology Bond funding to purchase "spend management" software that, if approved, will provide an important tool to track overbilling. OSD also intends to establish a contingent fee based contract for comprehensive recovery auditing services and transaction assurance similar to a contract executed by the State of New York to identify recoupment resulting from double or incorrect billing and payments.
4. OSD will include language in all future procurements that requires contractors to electronically submit regular and detailed sales and billing information.
5. OSD's Quality Assurance Team will continue to review procurement and purchasing activities of all Executive Departments on a post audit basis and will expand their work to selected Non-Executive

¹ The Senate Post Audit and Oversight Committee Report did not cite which branch or department of state government paid \$.60 for a standard light bulb.

² The Most Favored Customer Clause was used in some but not all OSD solicitations prior to 2002.

Departments. This expanded review will also include a review of each department's use of non-competitive procurement exceptions, including legislative exemptions, emergency contracts, collective purchasing arrangements and interim contracts, and their use of the "deal too good to pass up" provision. Where problems are identified, training and technical assistance will be provided with some departments placed on a "watch" status for more frequent monitoring and where serious infractions are uncovered, procurement delegation may be rescinded.

Long term, the Commonwealth needs to invest in an online purchasing system, which would help track and monitor the necessary level of detail at the point of the order being placed in order to better manage the spend, identify off-contract spending and identify opportunities for aggregate purchases at the time of ordering rather than at the time of payment.

Finally, if more Commonwealth entities were required to purchase using Statewide Contracts and the necessary tools were available to track those purchases, OSD would be better able to negotiate more competitive pricing for all eligible entities.

(c) a report on reverse auctions and multiple round requests for proposal, the frequency that these procurement bidding processes occur in relation to other bidding processes and the reasons why each bid process is chosen over another bid process.

OSD Response:

Reverse Auctions are an important procurement tool, which can be invaluable in assisting entities in securing better prices for certain commodities and services. However, they can not be used alone. Other available procurement tools include limiting the number of product lines, managing the spend and limiting the number of awarded contractors to one or few.

Reverse Auctions are most effective at reducing prices when the commodity or service being procured is generic in nature and identical across bidders with easily defined specifications, e.g. sand, road salt, aluminum for road signs. Under those conditions, a reverse auction conducted for a complex technology project would probably not provide the same level of value as for a raw material such as concrete. In addition, Reverse Auctions are more successful when there is a sufficient number of competing bidders.

Over the past 3 years, OSD has saved the Commonwealth over \$1 million after conducting reverse auctions for the following commodity procurements:

- 1) Road salt;
- 2) Aluminum sheeting for road signage;
- 3) Washed Sand; and
- 4) Office paper.

One possible explanation for the small number of procurements to date using reverse auction technology is the cost per auction event of \$3,000. The per event cost is competitive based on SOS's analysis of similar contracts in other states, however cost may be one reason why departments have been reluctant to use this relatively new approach. OSD anticipates an increase in the number of procurements using Reverse Auctions due to a recently created policy requirement that the reverse auction event be paid for by the winning bidder(s). In addition, OSD will also have reverse auction functionality available through the Enhanced Comm-PASS system at a later phase in the project.

Regarding multiple round bidding and negotiating options, OSD's current regulations (801 CMR 21.06 (11) and 21.07 respectively) permit the use of Best and Final Offers (BAFO) and competitive negotiations that result in lower costs or better value to the Commonwealth. OSD has implemented a new policy mandating the use of multiple round negotiating tools, including Reverse Auctions, BAFOs and/or Request for Quotes (RFQs) in the procurement of statewide contracts. In the past month, OSD has utilized multiple round BAFOs to help secure significantly reduced pricing in the new statewide contract for copiers, printers and facsimiles, as discussed in other sections of this report.

(d) where efficiencies can be made in providing statewide procurement contracts for any, information technology, printers, facsimile machines, copiers, telecommunication equipment, mail machines, and other hardware electronic equipment leases, purchases and warranties.

OSD Response:

As a result of recent changes in the way OSD procures goods and services, the Commonwealth will be the beneficiary of significantly improved prices in the recently awarded solicitation for copiers, printers, facsimiles and related supplies. OSD benchmarked the prices of this new contract against the State of Connecticut's relatively new contract and against our previous contract for the same commodities and services. As a result of reducing the number of product lines, limiting the number of contractors and conducting multiple rounds of negotiations, OSD secured pricing that is 33% - 52% less than those received by the State of Connecticut for the same black and white digital copier equipment models from the same bidder, Ikon Office Solutions. When comparing the Commonwealth's previous statewide contract for digital black and white copiers to the newly awarded statewide contract, the projected annual savings from Ikon alone average 29% less than their previous prices to the Commonwealth, which translates into annual savings of approximately \$14.5 million, assuming the same volume purchases from Ikon. Significant savings were also achieved for the other product lines and from other awarded bidders.

This significant savings is also the result of OSD's consolidating copiers, printers and facsimile equipment into one solicitation, which provided OSD with increased leverage of volume across all manufacturers within all three industries and provided bidders with the opportunity to have all their products represented on one contract. It also resulted in lower equipment costs (hard savings) and administrative costs (soft savings) to the Commonwealth and eventually to the statewide contractors while allowing users of the contract to purchase more efficiently (i.e. one stop shopping).

This procurement also included language that notified all prospective bidders that OSD will not exercise the termination without cause provision (which is contained in the Commonwealth's Standard Terms and Conditions) for all leased equipment under contracts that result from this RFR. This provision alone helped to drastically reduce the perceived risk associated with leasing to the Commonwealth and therefore reduced the lease costs.

OSD routinely requests that prospective winning bidders provide benchmark pricing for any other comparable contracts pursuant to the "Most Favored Customer" clause discussed earlier in this report. As a result of negotiating with one such bidder, after reviewing their prices with a 17 state consortium of western states, known as the Western State Contracting Alliance (WSCA), the Commonwealth was able to secure WSCA's same higher discounted price structure, saving the Commonwealth additional costs for the wireless services with that one contractor. In addition, OSD requires bidders to disclose if it contracts with the Federal Government through their GSA Advantage program so OSD can conduct a comparison to assure that the Commonwealth is receiving the best value and lowest cost commodity or service.

Finally, as noted above, OSD will be using a rate card to set prices for time and materials for Information Technology consultants, reducing the size of the contract fivefold in order to concentrate spend and increase competition.

These are some of the efficiencies that have been and will be used in procuring statewide contracts.

(e) the division shall include in said report recommendations to require the trial courts, University of Massachusetts system, community colleges and state colleges to utilize the statewide contracts in the same manner of all other agencies.

OSD Response:

Trial Courts

Currently, only the Legislature and the Military are named exemptions under the Operational Services Division's statutes ([MGL c. 7, § 22](#), [MGL c. 30, § 51](#) and [MGL c. 30, § 52](#)). As the third branch of state government in the

Commonwealth, there is some question as to why the Judiciary was not a named exemption in these statutes pursuant to Article 30 of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts, which sets forth the separation of powers principle in the Massachusetts Constitution. There is also case law, which supports the separation of powers of the 3 branches of state government but specifically states that it does not preclude participation on a voluntary basis.³

While the Legislature did not specifically name the Judiciary as being exempt from [MGL c. 7, § 22](#), [MGL c. 30, § 51](#) and [MGL c. 30, § 52](#), its original intent may be based on the separation of powers provisions of the Constitution. Therefore, OSD is seeking clarification from the Legislature as to its intent regarding whether the Judicial Branch should be specifically exempted from our authority. However, OSD would argue that, by leveraging together as much public purchasing volume as possible when OSD issues solicitations for statewide contracts, the Commonwealth would achieve even greater savings. Therefore, while there may be constitutional or statutory reasons why the Legislature, Military and Judiciary are not required to utilize statewide contracts established by OSD, there are financial reasons why they should do so voluntarily.

In response to this subsection of Outside Section 277, OSD met with representatives of the Trial Courts recently to review their purchasing needs, discuss the relevant Section 277 language and begin a dialogue on how our two organizations can leverage volume to maximize savings for those commodities and services needed by the Trial Courts to perform their critical mission most efficiently. During this meeting, OSD learned that the Trial Courts “utilize statewide contracts for 98% of their purchases”, including the following statewide contracts: photocopiers, movers, telephone services, court reporters, printers and temporary help. OSD and the Trial Courts have agreed to work at developing a memorandum of understanding that acknowledges the exempt status of the Judiciary but makes the commitment, in principal, to their voluntary cooperation in including their purchasing volume in OSD procurements and their using statewide contracts when available and practical.

Higher Education

Higher Education, while not named as an exemption under OSD’s statutes ([MGL c. 7, § 22](#), [MGL c. 30, § 51](#) and [MGL c. 30, § 52](#)), has limited statutory authority of its own with regard to procurements up to certain dollar thresholds and for the purchase of library books, periodicals, educational supplies and other commodities and services without dollar threshold limitations. See [MGL c. 75, § 13](#), [MGL c. 73, § 15](#), [MGL c. 15A, § 24](#) and [MGL c. 15A, 24A](#). Beyond that, all of their purchases fall under OSD’s authority.

The Higher Education system (including both public and some private) in the Commonwealth reported spending \$148 million in FY 2003 and \$150 million in FY 2002 on commodities and services. (Reported in the Massachusetts Higher Education Consortium Annual Report). However, the University of Massachusetts – Amherst has informed OSD that this MHEC volume does not represent a major portion of the University’s procurement activity. The commodities and services purchased by Higher Education were purchased from contracts with many of the same companies that sell to the Commonwealth through OSD’s statewide contracts for what appears to be the same or similar commodities and services.

In a telephone conference with the Procurement Director for the University of Massachusetts - Amherst, it was acknowledged that UMass Amherst uses OSD’s statewide contracts in some instances and some other contracts by the Massachusetts Higher Education Consortium (MHEC). UMass Amherst conducts most of their own procurements separate from MHEC or OSD as they believe that approach has provided them with better value and pricing. They also acknowledged that they routinely award their contracts to a single vendor. Since OSD will also be adopting a similar practice of awarding statewide contracts to the fewest number of bidders, we believe there will be new opportunities to jointly buy smarter. Our discussion with UMass concluded with an agreement to meet in January 2005 with the University of Massachusetts Procurement Council (made up of representatives from the five UMass campuses and one representative from the UMass President’s office) in order to discuss procurement matters further.

³ *Opinion of the Justices to the House of Representatives*, 365 Mass. 639 (1974), 309 N.E. 2d 476 (1974).

OSD believes that leveraging Higher Education spending within statewide procurements will result in lower prices and better contract terms. Therefore, OSD plans on working closely with Higher Education over the upcoming months in order to review their procurement systems, policies, current prices and specific needs (including any planned solicitations) and then to develop a plan based on this information. If, however, the Legislature determines that Higher Education should be required to use statewide contracts, then language changes to the Higher Education statutes that provide procurement and purchasing exemptions would be needed in the FY 2006 budget.

Finally, in addition to the Legislature and Military's exemption from our authority and, notwithstanding our request for clarification on the Judiciary and our plan to work closely with the Judiciary and Higher Education in the upcoming months, OSD had also previously exempted the applicability of our procurement regulations (and thereby our statewide contracts) to Constitutional Offices, Elected Offices and Independent Public Authorities. OSD is reviewing the regulations and considering removal of the exemption for Constitutional Offices and Elected Offices (excluding elected Legislators that are exempted by statute) in order to increase the Commonwealth's already significant purchasing power and to reduce prices. The Legislature's support when and if OSD removes these exemptions from our regulations will be instrumental if OSD is to succeed in negotiating better prices on statewide contracts. Furthermore, voluntarily combining the purchasing volume of all branches and departments of the Commonwealth would help to achieve even greater savings for all participating entities and lessen the financial burden on taxpayers.

VI. OSD's Oversight Responsibilities

In addition to establishing statewide contracts, OSD has oversight responsibility to ensure that procurements conducted under OSD's statute and regulations, are fair, open and competitive. OSD accomplishes this in several ways:

- The Procurement Policies and Procedures Handbook identifies the components that must be included in a solicitation and the process that must be followed to ensure compliance with the statute and regulations;
- OSD's procurement and legal staff are available to provide technical assistance and answer procurement questions; and
- OSD's Quality Assurance Unit conducts on site reviews of all Executive Departments to ensure compliance with OSD's requirements. Procurement files are selected at random and reviewed for completeness and on line solicitations are reviewed on Comm-PASS. Depending on the seriousness of the issues identified as a result of a Q/A review, the team may recommend staff training, require a prior review of solicitations by the Q/A team prior to issuance or, in extreme cases, may rescind a department's procurement delegation until such time as the problems are resolved.

Recently, there have been concerns raised by the Legislature and the Inspector General regarding an option available to departments known as "A Deal Too Good to Pass Up". While in the past there may have been opportunities for departments to award contracts based on a "sole source" justification, that option does not exist under OSD's rules. There is no such thing as a "deal too good to pass up" unless and until a department has taken steps to confirm, through a public process that is fair, open and competitive, that there is no other bidder that can meet or beat the deal being offered to the Commonwealth. The language in OSD's handbook is quite clear in stating that "prior to accepting these offers, or proceeding with a contract, departments must conduct adequate research to determine if the deal is legitimate.....A department must publicize the potential contract.....electronically in Comm-PASS and/or newspapers to determine if there are any other interested bidders willing and able to offer a comparable deal..." Since the launch of the Comm-PASS system in 1996, OSD has identified fewer than 10 such notices out of a total of 15,929 postings.

OSD shares the concern of the Legislature and the Inspector General that this provision may not be fully understood or appropriately implemented by departments. OSD, as the agency with procurement oversight responsibility, believes that taxpayers and the business community must have absolute confidence in the fairness of the public procurement process. If there is even one department abusing this provision, it has the potential to undermine confidence in the entire public procurement process.

To address this situation, OSD has issued a policy directive that requires all departments to request and receive, in writing, approval from the State Purchasing Agent prior to posting a notice on Comm-PASS under this provision. A copy of that policy is attached to this report (See Attachment A).

In addition, the OSD Quality Assurance Team, when conducting regular department site visits, will now include a review of the “deal too good to pass up” procedural requirements and all department procurement files in this area. Quality Assurance reviews will also be expanded to include all competitive procurement exception categories.

OSD believes that this rarely used provision saves the taxpayer money and represents a “common-sense” approach to procurement however we must safeguard the integrity so important in a public procurement system.

VII. Conclusion and Next Steps

OSD shares the Legislature’s interest in maximizing the Commonwealth’s purchasing power, conducting multiple round negotiations with bidders, streamlining contracts, increasing competition and taking advantage of reverse auctions and spend management technology. OSD believes there are real opportunities to generate hard dollar savings. These opportunities to generate savings were identified by Silver Oak Solutions and OSD has started implementing those reforms that require no additional resources or technology. OSD is committed to working closely with the Legislature with a shared goal of providing direct savings and better managing the Commonwealth’s use of statewide contracts.

Some of the SOS recommendations that require funding or additional staff resources include:

1. Utilize available technology to develop standardized monthly vendor usage report templates to monitor volume, pricing and aggregate purchase opportunities. OSD has requested FY 2006 bond funding for this initiative.
2. Optimize the supplier selection process by targeted training of OSD staff to focus on spend management analysis, negotiations, benchmarking and research.
3. Selectively hire additional procurement and technical staff to create contract savings and expand the availability of statewide contracts.
4. Enable procurement staff to refocus on strategic rather than tactical tasks by hiring customer support/research staff.

In order to implement the procurement reforms identified in this report and generate savings for Commonwealth departments, cities, towns, eligible not-for-profits and other eligible entities that use statewide contracts, the Romney administration will be requesting an increase to OSD’s FY 2006 main appropriation account (1775-0100). The Governor’s budget also restores the ceiling of a Surplus Vehicle retained revenue account (1775-1100) to FY 2004 levels and increases the ceiling in an audit recoupment retained revenue account (1775-0124), both of which are **100% funded from non-Commonwealth revenues**. As justification for restoring 1775-1100, an Independent State Auditor’s Report for the Disposal of State Surplus Vehicles (No. 2004-1414-30) recommended that OSD advocate for the Legislature to increase the fiscal year 2006 retained revenue ceiling to its previous level of just over one million dollars. The audit report states “As it currently exists, the surplus vehicle program is a self-sufficient program within OSD, as it should continue to be.” In order for OSD to continue to run this program effectively, the House 1 Budget will include a restoration of this account to its FY 2004 level.

These additional requested resources will amount to a fraction of the amount of savings that OSD will generate by enhancing our technology, staffing and procedures. OSD respectfully requests the Legislature’s support of the Governor’s FY 2006 budget proposal for OSD. The additional requested funds will be used to:

- Hire additional procurement, technical and contract support staff;
- Provide training to procurement staff so that they: enhance their market expertise in the specific commodity/service industries for which they are responsible, improve efficiency, negotiate better prices, and provide enhanced customer service;
- Expand OSD’s oversight and audit capabilities; and

- Support technology needs to better control spend, identify over-billing or double billing and implement an on-line epurchasing system to better achieve the Commonwealth's goals of increased savings of taxpayer dollars.

In conclusion, OSD is appreciative of the Legislature's interest in better understanding the work of the state's centralized procurement office and in supporting OSD's efforts to achieving greater savings for the taxpayers of the Commonwealth.

Attachment A

OSD Policy Guidance 05-11
Changes to “A Deal Too Good to Pass Up”



**The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Operational Services Division
One Ashburton Place, Boston, MA 02108-1552**



Mitt Romney
Governor

Eric A. Kriss
Secretary

Kerry Healey
Lieutenant Governor

Philmore Anderson III
State Purchasing Agent

TO: Department Heads, Chief Financial Officers, General Counsels and Interested Parties

From: Philmore Anderson III
State Purchasing Agent
Operational Services Division

Date: January 21, 2005

RE: OSD Policy Guidance 05-11
Changes to "A Deal Too Good to Pass Up"

Concerns have been raised to OSD by the Legislature and the Inspector General regarding the provision known as "A Deal Too Good to Pass Up". This provision, which is explained in Chapter 2 of the Commonwealth's Procurement Policies and Procedures Handbook, recognizes the possibility that departments are, on occasion, approached by companies and presented with a great deal or opportunity which, if rejected by the Commonwealth, could be wasteful or disadvantageous. Examples of situations that might fall under this provision include offers made to the Commonwealth at zero cost, at a cost significantly lower than market cost and deals that would result in payment(s) to a department, such as in the case of removal of recycled materials.

The Handbook explains in great detail that there is, in fact, no such thing as a "deal too good to pass up" unless and until a department has taken steps to confirm, through a public process that is fair, open and competitive, that there is no other bidder that can meet or beat the deal being offered to the Commonwealth. The language in the handbook is quite clear in stating that "prior to accepting these offers, or proceeding with a contract, departments must conduct adequate research to determine if the deal is legitimate.....A department must publicize the potential contract.....electronically in Comm-PASS and/or newspapers to determine if there are any other interested bidders willing and able to offer a comparable deal..."

Since the launch of the Comm-PASS system in 1996, OSD has identified fewer than 10 such notices out of a total of 15,929 postings. OSD believes that this rarely used provision can result in significant savings and represents a "common-sense" approach to procurement, however, OSD must take all necessary steps to ensure that departments are fully compliant with the requirements associated with this provision. If there is only one example of an abuse or misunderstanding of what is required, that has the potential to undermine confidence in the fair, open and competitive requirements of the Commonwealth's public procurement process.

Therefore, effective immediately, the provision known as "A Deal Too Good to Pass Up" will be modified as follows:

1. The Chief Financial Officer of the Department intending to use this provision must seek approval on department letterhead and in writing from the State Purchasing Agent. The following information must be included in the written request for approval:
 - A detailed description of the commodity or service being offered;
 - The name of the company that is offering the commodity or service and the terms of that offering;
 - An explanation of why the department is seeking to post notice of the offer rather than conduct a competitive procurement including all research and due diligence conducted by the department that resulted in the decision to exercise this option;
 - A copy of the RFR specifications that will be posted on Comm-PASS if the request to post the notice is approved in writing by the State Purchasing Agent; and
 - Proposed timeframes for posting on Comm-PASS. Please note that, while the timeframe for posting the notice on Comm-PASS may be brief, it must be posted for at least fourteen business days, the minimum period of time OSD believes is sufficient for all potential companies to review the specifications and respond, if it believes that the Commonwealth can achieve a better offer through a competitive bid. Please note that World Trade Organization requirements may mandate a longer posting period based on the total dollar value of the potential contract.
2. Once written approval has been received, a department must post the potential contract, using the Request for Response template on Comm-PASS to determine if there are any other interested bidders willing and able to provide a comparable or better offer. Departments may supplement the Comm-PASS posting with a similar notice in a newspaper, however, all RFRs posted under this provision with a procurement value of greater than \$5,000 must appear on Comm-PASS. If no other interest is generated in response to the RFR, the department may proceed with a contract. However, depending on how the notice/RFR was written, if interest is generated, the department must either conduct a procurement that is fair, open and competitive or, if the notice was designed to solicit the actual submission of an RFR response with a comparable or better deal, then the department must evaluate all submitted responses.
3. All documentation, correspondence and information must be retained by the department in a procurement file.
4. OSD's Quality Assurance Team, when conducting regular department site visits, will now include a review of the "deal too good to pass up" procedural requirements and all related department procurement files in this area. In addition and effective immediately, OSD's Quality Assurance Team will be expanding their procurement file review to include all non-competitive procurement exception categories including legislative exemptions, emergency contracts, collective purchasing arrangements and interim contracts.
5. Finally, the name of this provision may have, in fact, contributed to the mistaken perception that there are certain deals not subject to public notice because they are simply "too good to pass up". While this was clearly not intended, OSD, to fulfill its oversight responsibilities, must have the capability to identify whenever departments are using this provision. Consequently, all written requests to the State Purchasing Agent and all postings on Comm-PASS must include this reference ("Notice of a Deal Too Good to Pass Up") in the title so OSD can better track use of this provision.

Please distribute these new policy requirements to all personnel within your department to whom this policy is relevant. This guidance will be posted on OSD's web page and, until such time as the Commonwealth Procurement Policies and Procedures Handbook is formally re-issued later this year, this policy will replace and supersede the language in the handbook pertaining to "A Deal Too Good to Pass Up".

Thank you for your immediate attention and compliance with these new policy requirements. I am confident that these changes will strike the appropriate balance between supporting a department's business needs while continuing to assure that the public procurement system remains fair, open and competitive.